The question whether he can establish a successful defence, either at Common Law or under the Control of Rent Ordinance, is a matter to be inquired into after he has been given leave to appear and has been added as a defendant in the proceedings. As Wynn-Parry J. said in *Leicester Permanent Building Society v. Shearly*[3], when considering the application of this principle to the facts of that case :—

"It is difficult to imagine how they came to be in possession under that letting unless it was one purporting to have been made by the defendant; but that is not a matter on which, as it seems to me, the Court can at this stage finally pronounce, and an opportunity ought to be given to the occupants to take any point that they may consider open to them with a view to resisting an order for possession against them."

So also in the present case, the respondents should be given an opportunity to resist the appellant's claim for possession by showing, if they can, that they are entitled to the protection of the Control of Rent Ordinance or, indeed, that they are entitled to retain possession on any other ground. The order made by the Court below gives them that opportunity and consequently it should, in our view, be affirmed by this Court.

For these reasons, we are of the opinion that this appeal should be dismissed with costs.

*Appeal dismissed.*

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## PUBLIC PROSECUTOR v. FAM KIM HOCK

[A. Cr. J. (Buhagiar J.) October 12, 1956]

[K. L. — Criminal Appeal No. 43 of 1956]

*Appeal — Appeal against sentence — Criminal Procedure Code (F.M.S. Cap. 6), s. 294 — Penal Code s. 408.*

In this case the respondent was convicted for an offence under section 408 of the Penal Code and was bound over under section 294 of the States Criminal Procedure Code. The Public Prosecutor appealed on the ground that the sentence was inadequate.

**Held:** (1) the sentence of the Court of first instance should not be altered unless it is manifestly wrong, wrong in the sense of being illegal or of being unsuitable to the proved facts and circumstances;

(2) in this case there was no good reason shown for interfering with the discretion exercised by the learned President and therefore the appeal must be dismissed.

*Cases referred to :—*

(1) *Liow Chow v. Public Prosecutor* (1939) M.L.J. 170.

(2) *Public Prosecutor v. Lim Guan Hock* (1949) M.L.J. 231.

MAGISTRATE'S CRIMINAL APPEAL.

*H. S. Ong* (Federal Counsel) for the appellant

*R. P. S. Rajasooria* for the respondent.

**Buhagiar J.** : — This is an appeal by the Public Prosecutor against the sentence imposed by the President Sessions Court at Klang on the respondent on conviction for an offence punishable under section 408 of the Penal Code; on conviction the respondent was bound over under section 294 of the Criminal Procedure Code to be of good behaviour for three years in his own recognizance of $5,000 and two sureties for $2,500 to come up for judgment if called upon. The ground of the appeal is that the sentence is inadequate.

At the hearing the learned Deputy Public Prosecutor referred to the facts of the case; he pointed out that the amount involved was $86,000 and the breach of trust had been going on since 1947; under the circumstances, he submitted that this was not a case where the provisions of section 294 of the Criminal Procedure Code should be applied.

It is an established principle that the sentence of the Court of first instance should not be altered unless it is manifestly wrong, wrong in the sense of being illegal or of being unsuitable to the proved facts and circumstances (see *Liow Chow v. Public Prosecutor*[1]). It is clear as Thomson J. pointed out in *Public Prosecutor v. Lim Guan Hock*[2], that the provisions of section 294 of the Criminal Procedure Code do not allow any Court to go to the length of saying that in every case of first offender the antecedents of the convicted person are necessarily such as to make it expedient to bind him over; each individual case must be considered on its own merits.

The offence is by no means of a trivial nature but the points mentioned in the above section are intended by the legislature to indicate the lines on which the discretion of the Court should be exercised. In applying the provisions of section 294 in the present case the learned President took into consideration the fact that the respondent was a first offender, the circumstances under which the offence was committed and that it was quite clear that the parties themselves would welcome a settlement. The last mentioned point would not in most cases be any reason why a convicted person should not suffer the punishment provided by law but in the particular circumstances of this case where the manager's son (who was the person with whom the respondent had to deal mostly and who for all practical purposes was the manager in Port Swettenham) had almost instructed him to commit irregularities is very relevant in considering whether this was a proper case for the application of section 294.

Under the circumstances I do not consider that there is good reason for interfering with the discretion exercised by the learned President and the appeal must be dismissed.

*Appeal dismissed.*